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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EPL HOLDINGS, LLC,
Plaintiff-Counterclaim Defendant,
v.
APPLE, INC.,
Defendant-Counterclaimant.

No. 12-cv-04306 (JST)

**JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT**

Judge: Hon. Jon S. Tigar

Pursuant to Patent Local Rule 4-3 and the Case Schedule Ordered by the Court, Plaintiff EPL Holdings, LLC (“EPL”) and Defendant Apple Inc. (“Apple”) (collectively, the “Parties”) submit the following claim construction and prehearing statement.

I. AGREED CLAIM CONSTRUCTIONS

Pursuant to Patent Local Rule 4-3(a), the Parties have agreed on the following constructions:

Claim Term	Agreed Construction
data time parameter '720 patent claims 7, 11	an amount of time required to render the portion of the temporal sequence presentation data at a normal playback rate
presentation time parameter '720 patent claims 7, 11	an amount of time elapsed during rendering of a portion of the temporal sequence presentation data
temporal sequence presentation data '903 patent claims 1, 6, 12, 13, 16, 22 '050 patent claims 1, 5, 8, 10, 13, 17, 20, 22, 25, 26, 27 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 42, 47, 48, 49, 50 '720 patent claims 1, 6, 7, 11	digital data (a series of bits) representative of media content
default rendition period '903 patent claims 6, 16 '050 patent claims 5, 10, 17, 22	length of time to render the element at a normal playback rate
default presentation rate	normal playback rate

'903 patent claims 1,
12, 13, 22

'050 patent claims 1, 8,
13, 20, 25, 36, 47, 48,
49, 50

'720 patent claims 1, 6

II. DISPUTED CLAIM CONSTRUCTIONS

Pursuant to Patent Local Rule 4-3(b), the Parties provide the construction of the following terms upon which the parties disagree, together with an identification of references from the specification or prosecution history that each party identifies to support its proposed construction, and an identification of any extrinsic evidence presently known to the party upon which it intends to rely:

Claim Term	EPL's Proposed Construction and Identified References	Apple's Proposed Construction and Identified References
<p>determining an input block of W signal representations from the input stream/determining an input block of signal representations from the input stream</p> <p>'769 patent claims 1, 10, 19</p>	<p>Plain and Ordinary Meaning, subject to the term "W" defined separately.</p> <p>'769 Patent, 4:57-64; 7:3-10:5; 10:65-11:61; 14:46-62; 15:23-39; Figures 2, 3, 4, 5, 6 and 8 and corresponding description.</p>	<p>searching for and identifying the starting position of an input block of W signal representations that is similar to the output stream / searching for and identifying the starting position of an input block of signal representations that is similar to the output stream</p> <p><u>Intrinsic Evidence:</u></p> <p>'769 patent at FIGS. 1, 2, 3, 4, 5, 6, 8; abstract; 4:57-65; 5:7-55; 6:22-44; 7:3-8:50; 8:67-14:21; 14:34-45; 14:63-15:2; 15:11-31; 15:41-16:47; 16:63-17:2.</p> <p>File History for U.S. Patent No. 5,175,769, Aug. 20, 1992, Notice Of Allowability.</p>

		<p><u>Extrinsic Evidence:</u></p> <p>Hejna, Donald J., “Real-Time Time-Scale Modification of Speech via the Synchronized Overlap-Add Algorithm” (Thesis), Massachusetts Institute of Technology, at 9, 10, 101-108; FIGS. 2-2, 2-3.</p> <p>Hejna and Musicus, “The SOLAFS Time-Scale Modification Algorithm,” <i>BBN</i>, July 1991, at 2-8; FIGS. 1-2.</p> <p>Roucos and Wilgus, “High Quality Time-Scale Modification for Speech,” <i>Acoustics, Speech, and Signal Processing, IEEE International Conference on ICASSP</i>, Vol. 10 (1985) at abstract, 495-496.</p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>
<p>W_{OV}</p> <p>’769 patent claims 1, 2, 10, 11</p>	<p>a parameter that represents the number of signal representations to be overlapped as determined by W and the time-scale modification.</p> <p>’769 patent, 7:3-10:40; 11:6-11; 12:42-60; 13:49-53; 14:33-63; Figures 2, 3, 4, 5, 6, 7 and 8 and corresponding description.</p>	<p>a parameter that fixes the number of signal representations to be overlapped as determined by W and the time-scale modification</p> <p><u>Intrinsic Evidence:</u></p> <p>’769 patent at FIGS. 1, 2, 3, 4, 5, 6, 7, 8; abstract; 3:5-4:48; 5:7-41; 6:5-21; 7:3-47; 7:64-8:48; 8:51-10:4; 10:21-11:62; 12:30-13:35; 14:5-21; 14:33-62; 15:65-16:33.</p> <p><u>Extrinsic Evidence:</u></p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>
determined by	Plain and Ordinary meaning	uniquely specified by

<p>'769 patent claims 1, 19</p>	<p>'769 patent, 7:3-10:5; 14:46-62; 15:31-40; Figures 2, 3, 4, 5, 6, 7 and 8 and corresponding description.</p>	<p><u>Intrinsic Evidence:</u></p> <p>'769 patent at FIGS. 1, 2, 3, 4, 5, 6, 7, 8; abstract; 3:5-4:48; 5:7-41; 6:5-21; 7:3-47; 7:64-8:48; 8:51-11:62; 10:21-11:62; 12:30-13:35; 14:5-21; 14:33-62; 15:65-16:33.</p> <p><u>Extrinsic Evidence:</u></p> <p>Schwartzman, <i>The Words of Mathematics: An Etymological Dictionary of Mathematical Terms Used in English</i> (The Mathematical Assoc. of Am., 1996).</p> <p>The New Oxford American Dictionary, 2001.</p> <p>The American Heritage Dictionary, 2nd College Edition, 1991.</p> <p>The Oxford English Dictionary, 2nd Edition, 1989.</p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>
<p>W</p> <p>'769 patent claims 1, 2, 10, 11</p>	<p>A parameter that represents the duration of the windowed segments of the input signal.</p> <p>'769 patent, 7:9-13; 7:22-10:5; 10:66-11:32; 14:46-62; 15:23-39; Figures 2, 3, 4 and 8 and corresponding description.</p>	<p>a parameter that fixes the duration of the windowed segments of the input signal that represents the smallest unit that the time-scale modification method manipulates</p> <p><u>Intrinsic Evidence:</u></p> <p>'769 patent at FIGS. 2, 3, 4, 5, 8; abstract; 5:7-41; 5:65-6:5; 7:3-47-63; 8:67-10:4; 10:66-11:15; 12:42-60.</p> <p><u>Extrinsic Evidence:</u></p> <p>Testimony of Dr. Julius Smith as set</p>

		forth in Exhibit A hereto.
<p>S_s</p> <p>'769 patent claims 2, 11</p>	<p>A parameter that represents the interframe interval between successive analysis windows along the output signal.</p> <p>'769 patent, 7:16-18; 7:64-8:9; 8:51-57; 8:67-9:5; 9:38-11:52; 14:21-15:40; Figures 2, 3, 4, 5, 6, 7 and 8 and corresponding descriptions.</p>	<p>a parameter that fixes the interframe interval between successive windows of length W along the output signal</p> <p><u>Intrinsic Evidence:</u></p> <p>'769 patent at FIGS. 1, 2, 3, 4, 5, 8; Abstract; 3:5-4:48; 5:7-41; 6:5-21; 7:3-47; 7:64-8:48; 8:51-11:62; 12:30-13:35; 14:33-62.</p> <p><u>Extrinsic Evidence:</u></p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>
<p>time scale modification/time scale modifying</p> <p>'769 patent claims 1, 10, 19</p>	<p>Speeding up or slowing-down the playback rate.</p> <p>'769 patent, 1:27-43; 1:63-2:14; 5:7-64; 6:46-7:2; 7:22-47; 8:67-10:4; 11:33-52; Figures 2, 3, 8 and corresponding descriptions, abstract.</p>	<p>a change to a signal's rate of reproduction without modifying its pitch / changing a signal's rate of reproduction without modifying its pitch</p> <p><u>Intrinsic Evidence:</u></p> <p>'769 patent at abstract; 1:5-43; 1:63-3:31; 4:44-56; 6:46-55; 14:63-15:2.</p> <p><u>Extrinsic Evidence:</u></p> <p>Hejna, Donald J., "Real-Time Time-Scale Modification of Speech via the Synchronized Overlap-Add Algorithm" (Thesis), Massachusetts Institute of Technology, at 1.</p> <p>Hejna and Musicus, "The SOLAFS Time-Scale Modification Algorithm," <i>BBN</i>, July 1991, at 1.</p> <p>Roucos and Wilgus, "High Quality Time-Scale Modification for Speech," <i>Acoustics, Speech, and Signal</i></p>

		<p><i>Processing, IEEE International Conference on ICASSP</i>, Vol. 10 (1985) at 493.</p> <p>Smith, Julius O., <i>Spectral Audio Signal Processing</i>, W3K Publishing, 2011 at 375</p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>
<p>current time</p> <p>'903 patent claims 4, 12, 22</p> <p>'050 patent claims 4, 16</p> <p>'720 patent claims 1, 6, 7, 11</p>	<p>A current position in the media content that can be expressed either as the time elapsed since the beginning of the media content presentation or as a location in the media content stream that is currently being played.</p> <p>'903 patent, 1:23-2:55; Summary section (2:62-5:23); 7:50-67; 8:12-34; 10:8-45; 12:30-33; 16:25-49; 16:62-17:15; 17:32-44; 18:66-19:10; 19:34-20:34; Figure 4 and corresponding description.</p> <p>'050 patent, 1:39-3:2; Summary section (3:9-5:37); 7:64-8:14; 8:26-48; 10:22-59; 13:43-46; 16:36-56; 17:5-34; 17:44-56; 19:13-25; 19:48-20:48; Figure 4 and corresponding description.</p> <p>'720 patent, 1:34-2:65; Summary section (3:3-5:33); 7:60-8:11; 8:22-43; 10:18-54; 12:43-46; 16:41-64; 17:10-30; 17:47-59; 19:13-25; 19:48-20:48; Figure 4 and corresponding description.</p>	<p>a current position in the media content that can be expressed either as the time elapsed since the beginning of the media content presentation or as a location in the media content stream that is currently being played</p> <p><u>Intrinsic Evidence:</u></p> <p>'903 patent at 1:50-2:35; 2:50-55; 3:1-21; 4:19-61; 10:26-45; 13:30-33; 16:34-17:1; 17:6-15; FIG. 4.</p> <p>File History for U.S. Patent No. 7,683,903, Aug. 16, 2004, Response to Office Action.</p> <p>'050 patent at 1:66-2:4; 2:12-15; 2:36-45; 2:64-3:2; 3:20-35; 10:40-59; 13:43-46; 17:5-11; 17:17-26; FIG. 4.</p> <p>'720 patent at 1:61-66; 2:7-10; 2:31-40; 2:59-64; 3:15-30; 10:36-55; 13:43-46; 17:10-16; 17:21-30; FIG. 4.</p> <p><u>Extrinsic Evidence:</u></p> <p>Testimony of Dr. Julius Smith as set forth in Exhibit A hereto.</p>

III. IDENTIFICATION OF MOST SIGNIFICANT TERMS

1 The parties have disputed constructions for fewer than ten total terms. In connection with
2 Patent Local Rule 4-3(c), EPL does not contend that the construction of any of these terms will
3 be case dispositive.

4 It is Apple's position that the construction of each of the seven disputed terms identified
5 in the preceding section are significant to the resolution of the case, but that none of the
6 constructions of these disputed terms is case or claim dispositive.

7 **IV. ANTICIPATED LENGTH OF TIME NECESSARY FOR THE CLAIM**
8 **CONSTRUCTION HEARING**

9 The Court has set a tutorial for this matter for January 7, 2014 at 1:00 p.m., with one hour
10 allocated to each side. The Parties propose that EPL present its tutorial presentation first,
11 followed by Apple's presentation.

12 The Court has set the claim construction hearing for January 10, 2014 at 1:00 p.m., with
13 ninety minutes allocated to each side.

14 EPL proposes that plaintiff make its presentation on claim construction issues, with the
15 opportunity to reserve time for rebuttal, followed by defendant's presentation, followed by a
16 rebuttal presentation from plaintiff. EPL is, however, open to whatever format of presentation
17 the Court would find most helpful.

18 Apple proposes that each disputed term be presented separately. For each term, one party
19 would make its presentation, the other party would then make its presentation, and then the first
20 party to present would have an opportunity for a rebuttal presentation. The parties would
21 alternate for each term which party will present first. Prior to the hearing, the parties would meet
22 and confer to determine a proposed order in which to present the terms.

23 **V. PROPOSED WITNESSES AT THE CLAIM CONSTRUCTION HEARING**

24 EPL does not believe that witness testimony will be necessary or helpful in connection
25 with the claim construction hearing in this matter. Apple proposes to call a retained expert to
26 potentially offer testimony on issues of claim construction. Apple has not disclosed the subject
27 matter of this proposed testimony to EPL prior to the filing of this joint statement (indicating that
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1 it would provide its attachment to this statement only at the time it was to be filed). The Federal
 2 Circuit clearly states that extrinsic evidence in general, and expert testimony in particular, is go
 3 be given little or no weight. *See, e.g. Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584
 4 (Fed. Cir. 1996). Given this, EPL respectfully submits that presentation of such testimony
 5 would be a distraction from the issues of claim construction presented in this case and wasteful.
 6 Given that Apple has not yet disclosed the substance of any anticipated testimony, EPL reserves
 7 the right to assert any further objections in light of such disclosures.

8 Apple may seek to call Dr. Julius Smith at the claim construction hearing. A summary of
 9 Dr. Smith's testimony, including his opinions concerning claim construction that he intends to
 10 offer, is attached hereto as Exhibit A.

11 EPL seeks to exclude this testimony by claiming that Apple has not complied with the
 12 requirements for relying on and presenting expert testimony set forth in the Local Rules of
 13 Practice for Patent Cases before the United States District Court for the Northern District of
 14 California. EPL is incorrect. With its Exchange of Preliminary Claim Constructions and
 15 Extrinsic Evidence, Apple, pursuant to Patent L.R. 4-2, timely provided EPL with "a description
 16 of the substance of [Dr. Smith's] proposed testimony that includes a listing of any [of his]
 17 opinions to be rendered in connection with claim construction." And in conjunction with the
 18 filing of this Joint Claim Construction and Prehearing Statement, Apple provided EPL, in
 19 advance of it filing this document, with Exhibit A hereto, which is a summary of Dr. Smith's
 20 testimony, including each opinion he intends to offer related to claim construction. EPL appears
 21 to argue that Apple should have provided it with this summary of Dr. Smith's testimony even
 22 further in advance of the filing of the Joint Claim Construction and Prehearing Statement. That
 23 argument, however, conflicts with Patent L.R. 4-3, which requires that any summary of an expert
 24 testimony be submitted only contemporaneously with the filing of the Joint Claim Construction
 25 and Prehearing Statement, not before. That is precisely what Apple has done here. Furthermore,
 26 EPL's statement that expert testimony should be "given little or no weight" is inconsistent with
 27 Federal Circuit precedent. The Federal Circuit has made clear that courts may use extrinsic
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evidence, such as expert testimony, to aid in construing claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1317-19 (Fed Cir. 2005).

Dated: September 23, 2013

Respectfully Submitted,

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